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**Attorneys for AEGIS SOFTWARE, INC. dba SAN DIEGO SPIRITS  
FESTIVAL and SAN DIEGO INTERNATIONAL SPIRITS BOTTLE  
COMPETITION, Plaintiff**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

AEGIS SOFTWARE, INC., a  
California Corporation dba SAN  
DIEGO SPIRITS FESTIVAL and SAN  
DIEGO INTERNATIONAL SPIRITS  
BOTTLE COMPETITION,

Plaintiff,

v.

22ND DISTRICT AGRICULTURAL  
ASSOCIATION, a State Institution of  
the STATE OF CALIFORNIA dba  
DISTILLED: SAN DIEGO SPIRIT &  
COCKTAIL FESTIVAL and SAN  
DIEGO SPIRIT & COCKTAIL  
COMPETITION,

Defendant.

Case No.: '15CV2956 BTM BLM

**COMPLAINT FOR:**

- 1) FEDERAL TRADEMARK  
INFRINGEMENT**
- 2) FEDERAL DILUTION OF  
FAMOUS MARK**
- 3) FEDERAL UNFAIR  
COMPETITION**
- 4) STATE SERVICE MARK  
INFRINGEMENT**
- 5) STATE SERVICE MARK  
DILUTION**
- 6) STATE UNFAIR COMPETITION**
- 7) BREACH OF FIDUCIARY DUTY**

**[JURY TRIAL REQUESTED]**

Plaintiff AEGIS SOFTWARE, INC. dba SAN DIEGO SPIRITS FESTIVAL  
and SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION  
("SDSF") brings this Complaint for Federal Trademark Infringement, Federal  
Dilution of Famous Mark, Federal Unfair Competition, State Service Mark

Infringement, State Service Mark Dilution, State Unfair Competition, and Breach of Fiduciary Duty against Defendant 22ND DISTRICT AGRICULTURAL ASSOCIATION OF THE STATE OF CALIFORNIA dba DISTILLED: SAN DIEGO SPIRIT & COCKTAIL FESTIVAL and DISTILLED: SAN DIEGO SPIRIT & COCKTAIL COMPETITION (“THE 22<sup>ND</sup> DISTRICT”), as follows:

**I.**

**PARTIES**

1. SDSF is a California Corporation, with its principal place of business at 5580 La Jolla Boulevard, Suite #436, La Jolla, California 92037. SDSF owns and operates the largest cocktail festival on the west coast and is ranked within the top five cocktail festivals in the United States.

2. THE 22<sup>ND</sup> DISTRICT is a State Institution of the State of California created under the provisions of Cal. Food & Agric.C. §3953, with its principal place of business at 2260 Jimmy Durante Blvd, Del Mar, CA 92014. THE 22<sup>ND</sup> DISTRICT is formed for the express purposes of “[h]olding fairs, expositions and exhibitions for the purpose of exhibiting all of the industries and industrial enterprises, resources and products of every kind or nature of the state with a view toward improving, exploiting, encouraging, and stimulating them,” and “[c]onstructing, maintaining, and operating recreational and cultural facilities of general public interest.” Cal. Food & Agric.C. §3951.

**II.**

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over SDSF’s Lanham Act claims pursuant to 15 U.S.C. §1125 and 28 U.S.C. §1331.

4. This Court has supplemental jurisdiction over SDSF’s state law claims pursuant to 28 U.S.C. §§1367 in that the state law claims are interrelated with the federal claims and arise from the common nucleus of operative facts such that the administration of these state law claims with SDSF’s federal claims furthers the

1 interests of judicial economy.

2 5. SDSF and THE 22<sup>ND</sup> DISTRICT are both located in this District.

3 6. Venue is proper in this Court under 28 U.S.C. §1391(b) because a  
4 substantial portion of the events giving rise to the claims for relief stated in this  
5 Complaint occurred in this District.

6 **III.**

7 **GENERAL ALLEGATIONS**

8 7. SDSF realleges paragraphs 1 through 6, inclusive, and incorporates the  
9 same herein as though set forth in full.

10 **Origin of the San Diego Spirits Festival**

11 8. In 2008, SDSF, by and through its principals, Alan and Elizabeth  
12 Edwards, resolved to host the premier specialty cocktail and spirits festival on the  
13 west coast.

14 9. Once they had the concept in place, they set out and spent a substantial  
15 amount of their time, money, and effort into planning, advertising, and ultimately  
16 transforming their vision into reality, which culminated in the first inaugural “**SAN**  
17 **DIEGO SPIRITS FESTIVAL**” in 2009.

18 10. On May 13, 2009, in anticipation of the event, SDSF registered the  
19 internet domain “[www.sandiegospiritsfestival.com](http://www.sandiegospiritsfestival.com)” with [www.godaddy.com](http://www.godaddy.com). A  
20 true and correct copy the SDSF’s Domain Name Registration is attached hereto as  
21 Exhibit 1.

22 11. SDSF also marketed the 2009 **SAN DIEGO SPIRITS FESTIVAL** in  
23 a variety of online, radio, television, and print media, in order to create publicity,  
24 branding, and interest in its inaugural event.

25 12. SDSF ultimately held the inaugural **SAN DIEGO SPIRITS**  
26 **FESTIVAL** on June 5-7, 2009 at the Se Hotel (now the Palomar Hotel) in  
27 Downtown San Diego, California. It was a smashing success. In particular, it  
28 enjoyed approximately 800 attendees and hosted 19 separate “Spirit Brands,” i.e.,

1 individual and corporate applicants seeking to showcase their respective product at  
2 the festival.

3 13. Given the success of the inaugural **SAN DIEGO SPIRITS FESTIVAL**  
4 in 2009, SDSF resolved to host the event on an annual basis.

5 14. On September 1, 2009, SDSF therefore registered the Fictitious  
6 Business Name “San Diego Spirits Festival” with the San Diego County  
7 Assessor/Recorder/County Clerk. A true and correct copy of the September 1, 2009  
8 Fictitious Business Name Statement is attached hereto as Exhibit 2.

9 15. The **SAN DIEGO SPIRITS FESTIVAL** continued to explode in  
10 popularity with each successive year.

11 16. In 2010, SDSF held the 2<sup>nd</sup> Annual **SAN DIEGO SPIRITS**  
12 **FESTIVAL** on June 3-5, 2010 at the Hilton San Diego Bayfront, in Downtown San  
13 Diego. It enjoyed approximately 1000 attendees (a 25% increase from the prior  
14 year) and 36 “Spirit Brands” (an 89% increase from the prior year).

15 17. In 2011, SDSF held the 3<sup>rd</sup> Annual **SAN DIEGO SPIRITS**  
16 **FESTIVAL** on June 25-26, 2011 at the Port Pavilion located at the Broadway Pier  
17 of the Downtown San Diego. It enjoyed approximately 1800 attendees (an 80%  
18 increase from the prior year) and 48 “Spirit Brands” (a 33% increase from the prior  
19 year). SDSF has held the event at the Port Pavilion on the Broadway Pier every year  
20 since.

21 18. In 2012, SDSF held the 4<sup>th</sup> Annual **SAN DIEGO SPIRITS**  
22 **FESTIVAL** on August 25-26, 2012. It enjoyed approximately 2500 attendees (a  
23 38% increase from the prior year) and 55 “Spirit Brands” (a 14% increase from the  
24 prior year).

25 19. In 2013, SDSF held the 5<sup>th</sup> Annual **SAN DIEGO SPIRITS**  
26 **FESTIVAL** on August 24-25, 2013. It enjoyed approximately 2800 attendees (a  
27 12% increase from the prior year) and 65 “Spirit Brands” (an 18% increase from the  
28 prior year).

20. Moreover, as the **SAN DIEGO SPIRITS FESTIVAL** continued to grow in popularity, in 2013, it hosted the first annual “**SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION**,” which has taken on a life of its own.

21. In particular, the **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** is an event that SDSF hosts within the **SAN DIEGO SPIRITS FESTIVAL**, where applicants from around the world submit new spirits for competition and judging.

22. In its inaugural year of 2013, the **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** hosted 35 competitors from around the world.

23. In 2014, SDSF held the 6<sup>th</sup> Annual **SAN DIEGO SPIRITS FESTIVAL** on August 23-24, 2014. It enjoyed approximately 3800 attendees (a 35% increase from the prior year) and 80 “Spirit Brands” (a 23% increase from the prior year). Moreover, the 2014 **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** received 86 bottle entries from around the world (a 173% increase from the prior year).

24. In 2015, however, SDSF saw its very first decline in attendance at the 7<sup>th</sup> Annual **SAN DIEGO SPIRITS FESTIVAL**, which took place on August 24-25, 2015.

25. The reason for SDSF’s decline is as a direct consequence of the infringing actions that THE 22<sup>ND</sup> DISTRICT has undertaken against it, as explained in more detail below.

#### **News Coverage**

26. As the popularity surrounding the **SAN DIEGO SPIRITS FESTIVAL** and the **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** has grown, SDSF has regularly appeared on a variety of television, Internet, and radio programs each year to discuss and promote the events.

27. In respect to television coverage, the **SAN DIEGO SPIRITS FESTIVAL** and the **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** have been featured in the following local news segments:

a. On June 17, 2011, the NBC San Diego Channel 7 News team featured a segment in which it showcased the upcoming 2011 **SAN DIEGO SPIRITS FESTIVAL**.<sup>1</sup>

b. On June 24, 2011, the CW Channel 6 News team featured a “Where’s Ruben” segment showcasing the upcoming 2011 at three different times throughout the day.<sup>2</sup>

c. On August 22, 2012, the CW Channel 6 News team featured a segment in which it interviewed Mrs. Edwards concerning the upcoming 2012 **SAN DIEGO SPIRITS FESTIVAL**.

(<https://www.youtube.com/watch?v=zoVyO79fbsU&feature=youtu.be>) It later featured a segment called “Test Your Spirit Knowledge” with Mrs. Edwards. <https://www.youtube.com/watch?v=qnaDcbwlZxQ&feature=youtu.be>)

d. On August 16, 2013, the CBS Channel 8 News team featured a segment in which it interviewed Mrs. Edwards concerning the upcoming 2013 **SAN DIEGO SPIRITS FESTIVAL**.<sup>3</sup>

e. On August 21, 2013, the Night and Day News team featured an online segment in which it interviewed Mr. Edwards concerning the upcoming 2013 **SAN DIEGO SPIRITS FESTIVAL**.<sup>4</sup>

f. On August 22, 2013, the Fox Channel 5 News team featured a segment in which it interviewed Mrs. Edwards concerning the upcoming 2013 **SAN**

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<sup>1</sup> [http://www.nbcsandiego.com/the-scene/food-drink/San\\_Diego\\_Spirits\\_Festival\\_San\\_Diego-124068369.html](http://www.nbcsandiego.com/the-scene/food-drink/San_Diego_Spirits_Festival_San_Diego-124068369.html)

<sup>2</sup> <https://www.youtube.com/watch?v=467rVgTQXgY>

<sup>3</sup> <https://www.youtube.com/watch?v=eh-cha-WStY>

<sup>4</sup> <https://www.youtube.com/watch?v=vuiRsOxFh9s>

1 **DIEGO SPIRITS FESTIVAL.**<sup>5</sup>

2 g. On August 22, 2013, the CW Channel 6 News team featured a  
3 segment in which it interviewed Mrs. Edwards concerning the upcoming 2013 **SAN**  
4 **DIEGO SPIRITS FESTIVAL.**<sup>6</sup>

5 h. On August 23, 2013, the KUSI Channel 9 News team featured a  
6 segment in which it interviewed Mrs. Edwards concerning the upcoming 2013 **SAN**  
7 **DIEGO SPIRITS FESTIVAL.**<sup>7</sup>

8 i. In August 2014, the CBS Channel 8 News team featured a  
9 segment in which it highlighted the upcoming 2014 **SAN DIEGO SPIRITS**  
10 **FESTIVAL.**<sup>8</sup>

11 j. On August 16, 2015, the CW Channel 6 News team featured a  
12 segment on the upcoming 2015 **SAN DIEGO SPIRITS FESTIVAL.**

13 k. On August 21, 2015, the CBS Channel 8 News team featured a  
14 segment in which it interviewed Mrs. Edwards concerning the upcoming 2015 **SAN**  
15 **DIEGO SPIRITS FESTIVAL.**

16 l. On August 21, 2015, the Fox Channel 5 News team featured  
17 another segment in which it interviewed Mrs. Edwards concerning the upcoming  
18 2015 **SAN DIEGO SPIRITS FESTIVAL.**<sup>9</sup>

19 m. On August 22, 2015, the KUSI Channel 9 News team featured a  
20 segment covering the 2015 **SAN DIEGO SPIRITS FESTIVAL.**

21 n. On August 22, 2015, the CBS Channel 8 News team featured  
22 another segment covering the 2015 **SAN DIEGO SPIRITS FESTIVAL** and noting  
23 Dennis Rodman's presence at the event.

24 o. On August 23, 2015, the KUSI Channel 9 News team a segment  
25

26 <sup>5</sup> [https://www.youtube.com/watch?v=jBfNNJUp\\_J0](https://www.youtube.com/watch?v=jBfNNJUp_J0)

27 <sup>6</sup> <https://www.youtube.com/watch?v=oAPxHO41ewY>

28 <sup>7</sup> <https://www.youtube.com/watch?v=Fw8EOJgpGxU>

<sup>8</sup> <http://www.cbs8.com/category/155799/video-landing-page?clipId=11783707&autostart=true>

<sup>9</sup> <http://fox5sandiego.com/2015/08/21/take-a-bite-out-of-the-san-diego-spirits-festival/>

covering the 2015 **SAN DIEGO SPIRITS FESTIVAL**.

p. On August 23, 2015, CBS Channel 8 News team featured a segment covering the 2015 **SAN DIEGO SPIRITS FESTIVAL** on the 4:00 pm, 6:00 pm, 11:00 pm news broadcasts.

q. On August 24, 2015, the KSDI Channel 50 News Team featured a segment concerning the upcoming 2015 **SAN DIEGO SPIRITS FESTIVAL**.<sup>10</sup> It later broadcasted coverage from the **SAN DIEGO SPIRITS FESTIVAL** as well.<sup>11</sup>

28. In respect to radio coverage, the **SAN DIEGO SPIRITS FESTIVAL** and the **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** have been featured in countless radio broadcasts. For example:

a. On May 27, 2010, “KCAA Radio, 1050 AM” interviewed Mrs. Edwards concerning the upcoming 2010 **SAN DIEGO SPIRITS FESTIVAL**.

b. On June 15, 2011, “WS Radio” interviewed Mrs. Edwards concerning the upcoming 2011 **SAN DIEGO SPIRITS FESTIVAL**.<sup>12</sup>

29. On June 2, 2014, Mrs. Edwards appeared in a radio interview on “Women’s Radio,” which recognized the **SAN DIEGO SPIRITS FESTIVAL** as “one of the top five spirit festivals in the world.”<sup>13</sup>

30. The **SAN DIEGO SPIRITS FESTIVAL** and the **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** have also been featured on countless occasions since 2009 in a variety of online news websites and print media. For instance:

a. On June 5, 2010, The Spirit World featured an article concerning the **SAN DIEGO SPIRITS FESTIVAL**, which was only in its third year of

<sup>10</sup> <https://www.youtube.com/watch?v=bosYa7wXNvA>

<sup>11</sup> <https://www.youtube.com/watch?v=zsH1tLErbfQ>

<sup>12</sup> See <http://www.wsradio.com/player/wsradio-player-link.cfm?player=windows&segdate=061511&segment=2&show=artrox>

<sup>13</sup> [www.womensradio.com/2014/06/the-cocktail-rennaissance-liz-edwards/](http://www.womensradio.com/2014/06/the-cocktail-rennaissance-liz-edwards/)



1 operation at that point.

2 b. On November 4, 2010, the San Diego Community Newspaper  
3 Group featured an article concerning the **SAN DIEGO SPIRITS FESTIVAL**,  
4 which was only in its third year of operation at that point.<sup>14</sup>

5 c. On June 22, 2011, the San Diego City Beats featured an article  
6 boasting that the **SAN DIEGO SPIRITS FESTIVAL** constituted the “apex” of the  
7 emerging cocktail culture in San Diego.<sup>15</sup>

8 d. On February 22, 2013, Fodors (the world’s largest publisher of  
9 English language travel and tourism information) featured an article naming the  
10 **SAN DIEGO SPIRITS FESTIVAL** as one of the “Best Cocktail Festivals in  
11 America.” A true and correct copy of the February 22, 2013 Fodors Article is  
12 attached hereto as Exhibit 3.

13 e. On July 1, 2013, Premier Traveler Magazine noted that the **SAN**  
14 **DIEGO SPIRITS FESTIVAL** is an event that “raise the bar for festive cocktail  
15 and beer happenings.” A true and correct copy of the July 1, 2013 Premier Traveler  
16 Article is attached hereto as Exhibit 4.

17 f. On August 20, 2015, the San Diego Union-Tribune printed a full  
18 page feature concerning the upcoming 2015 **SAN DIEGO SPIRITS FESTIVAL**  
19 and **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION**.

20 g. On August 20, 2015, Discover San Diego’s featured article  
21 consisted of coverage for the upcoming 2015 **SAN DIEGO SPIRITS FESTIVAL**  
22 and **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION**.

23 **Recognition and Awards**

24 31. Through its branding and quality of service, as SDSF’s marks, **SAN**  
25 **DIEGO SPIRITS FESTIVAL** and **SAN DIEGO INTERNATIONAL SPIRITS**  
26

27 <sup>14</sup> [http://sdnews.com/bookmark/10166571/article-Longtime-La-Jollan-has-a-taste-for-mixology--holds-popular-](http://sdnews.com/bookmark/10166571/article-Longtime-La-Jollan-has-a-taste-for-mixology--holds-popular-downtown-event)  
28 [downtown-event](http://sdnews.com/bookmark/10166571/article-Longtime-La-Jollan-has-a-taste-for-mixology--holds-popular-downtown-event)

<sup>15</sup> <http://sdcitybeat.com/article-9222-the-san-diego-spirits-festival.html>

1 **BOTTLE COMPETITION** have earned SDSF a variety of awards, recognition,  
2 and accolades at the local, national, and international levels. For instance:

3 a. In 2011, Mayor Jerry Sanders delivered a Proclamation greeting  
4 guests and participants at the third annual **SAN DIEGO SPIRITS FESTIVAL** that  
5 occurred on June 25-26, 2011. A true and correct copy of the June 25, 2011 Jerry  
6 Sanders Letter is attached hereto as Exhibit 5.

7 b. In 2012, Mayor Sanders delivered a second Proclamation  
8 greeting guests and participants at the fourth annual **SAN DIEGO SPIRITS**  
9 **FESTIVAL** that occurred on August 25-26, 2012. A true and correct copy of the  
10 August 25, 2012 Jerry Sanders Proclamation is attached hereto as Exhibit 6.

11 c. On February 22, 2013, Fodors recognized the **SAN DIEGO**  
12 **SPIRITS FESTIVAL** as one of the “Best Cocktail Festivals in America.” A true  
13 and correct copy of the February 22, 2013 Fodors Article is attached hereto as  
14 Exhibit 3.

15 d. On August 24, 2013 interim Mayor Todd Gloria presented a  
16 “Special Commendation” to SDSF proclaiming August 24, 2013 as “San Diego  
17 Spirits Festival Day” for all San Diegans. A true and correct copy of the August 24,  
18 2013 Todd Gloria Special Commendation is attached hereto as Exhibit 7.

19 e. On August 24, 2014 Mayor Kevin L. Faulconer again  
20 proclaimed August 23, 2014 as “San Diego Spirits Festival Day” in San Diego. A  
21 true and correct copy of the August 24, 2014 Kevin Faulconer Proclamation is  
22 attached hereto as Exhibit 8.

23 f. On August 22, 2015 Mayor Faulconer again proclaimed August  
24 22, 2015 to be “San Diego Spirits Festival Day” in San Diego. A true and correct  
25 copy of the August 22, 2015 Kevin Faulconer Proclamation is attached hereto as  
26 Exhibit 9.

27 g. Over the years, the **SAN DIEGO SPIRITS FESTIVAL** and  
28 **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** has also

1 attracted the attention of several celebrities. For instance:

2 h. In 2015, Dennis Rodman appeared at the 2015 **SAN DIEGO**  
3 **SPIRITS FESTIVAL** in order to market and promote his vodka line.

4 i. In 2013, Vince Neil appeared at the 2013 SAN DIEGO SPIRITS  
5 FESTIVAL in order to market and promote his tequila line.

6 j. Ron Jeremy has appeared at the 2013, 2014, and 2015 SAN  
7 DIEGO SPIRITS FESTIVALS in order to market and promote his rum line.

8 **The July 7, 2013 Meeting**

9 32. As the popularity surrounding the **SAN DIEGO SPIRITS FESTIVAL**  
10 and **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION**  
11 continued to grow, it ultimately caught the attention of THE 22<sup>ND</sup> DISTRICT, which  
12 is formed for the express purpose of “[h]olding fairs, expositions and exhibitions for  
13 the purpose of exhibiting all of the industries and industrial enterprises, resources  
14 and products of every kind or nature of the state with a view toward improving,  
15 exploiting, encouraging, and stimulating them,” and “[c]onstructing, maintaining,  
16 and operating recreational and cultural facilities of general public interest.” Cal.  
17 Food & Agric.C. §3951.

18 33. This purpose includes hosting such fares, expositions, and exhibitions  
19 at the “San Diego County Fair.”

20 34. In mid-2013, THE 22<sup>ND</sup> DISTRICT contacted SDSF and invited Mr.  
21 and Mrs. Edwards meet at its headquarters in Del Mar on July 7, 2013, in order to  
22 discuss a potential “partnership” between SDSF and THE 22<sup>ND</sup> DISTRICT.

23 35. In particular, THE 22<sup>ND</sup> DISTRICT informed SDSF that it was  
24 interested in holding an annual event showcasing cocktails during the San Diego  
25 County Fair.

26 36. Mr. and Mrs. Edwards agreed to and attended a meeting with several  
27 individuals representing THE 22<sup>ND</sup> DISTRICT the on July 7, 2013, as it had  
28 requested.

1           37. At the meeting, THE 22<sup>ND</sup> DISTRICT first assured SDSF that THE  
2 22<sup>ND</sup> DISTRICT had “no intention of going into commercial competition with the  
3 San Diego Spirits Festival.” Instead, THE 22<sup>ND</sup> DISTRICT assured Mr. and Mrs.  
4 Edwards that it was interested in nothing more than exploring a “partnership” with  
5 SDSF that could include a “lead up” event for SDSF’s **SAN DIEGO SPIRITS**  
6 **FESTIVAL** and **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE**  
7 **COMPETITION**.

8           38. With this assurance, Mr. and Mrs. Edwards proceeded to share, in  
9 detail, their operational structure, services, pricing and business model that they had  
10 developed in connection with the **SAN DIEGO SPIRITS FESTIVAL** and **SAN**  
11 **DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** with THE  
12 22<sup>ND</sup> DISTRICT.

13           39. SDSF left the meeting feeling excited about the possibilities that a  
14 potential partnership with THE 22<sup>ND</sup> DISTRICT offered, which would include  
15 continuing to grow the branding associated with its marks, **SAN DIEGO SPIRITS**  
16 **FESTIVAL** and **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE**  
17 **COMPETITION**.

18           40. The next day, on July 8, 2013, SDSF sent a letter to THE 22<sup>ND</sup>  
19 DISTRICT thanking it for its interest and the time they spent together  
20 brainstorming. A true and correct copy of the July 8, 2013 Letter is attached hereto  
21 as Exhibit 10.

22           41. SDSF heard nothing in response to the July 8, 2013 Letter or in regards  
23 to any further discussion from THE 22<sup>ND</sup> DISTRICT of a “partnership,” however,  
24 until SDSF discovered that THE 22<sup>ND</sup> DISTRICT never intended to explore any  
25 “partnership” between them, but rather instead intended to steal SDSF’s business  
26 plan and launch its own competing and infringing event.

27 **The Infringement**

28           42. Using the information that it took from the July 7, 2013 meeting, THE

22<sup>ND</sup> DISTRICT ultimately announced its plan to hold a competing cocktail and culinary festival and competition at the San Diego County Fair on June 27, 2015 called: “**DISTILLED: SAN DIEGO SPIRIT & COCKTAIL FESTIVAL**” and the “**THE SAN DIEGO SPIRIT & COCKTAIL COMPETITION,**” respectively.<sup>16</sup>

43. Confusion between the two festivals and competitions immediately ensued.

44. In particular, THE 22<sup>ND</sup> DISTRICT’s name for its event, **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL FESTIVAL**, is confusingly similar to SDSF’s name for its event, the **SAN DIEGO SPIRITS FESTIVAL**.

45. Moreover, THE 22<sup>ND</sup> DISTRICT’s naming of its associated competition **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL COMPETITION** is confusingly similar to SDSF’s marks, **SAN DIEGO SPIRITS FESTIVAL** and **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION**.

46. On May 23, 2015, SDSF therefore sent a letter to THE 22<sup>ND</sup> DISTRICT, detailing the infringing impact that its actions had upon SDSF’s rights in its marks, **SAN DIEGO SPIRITS FESTIVAL** and **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION**. A true and correct copy of the May 23, 2015 Letter is attached hereto as Exhibit 11.

47. THE 22<sup>ND</sup> DISTRICT ignored SDSF entirely.

48. In fact, on May 27, 2015, Radio Station FM 94.9 featured an online advertisement for THE 22<sup>ND</sup> DISTRICT’s upcoming festival on June 27, 2015, which included a promotional video that SDSF had created in 2014 for the **SAN DIEGO SPIRITS FESTIVAL**. A true and correct copy of the 2014 Promotional Advertising is attached hereto as Exhibit 12.

49. Indeed, the promotional video featured Mrs. Edwards and many 2014

<sup>16</sup> <http://distilledsandiego.com/>

1 SDSF participants promoting the 2014 **SAN DIEGO SPIRITS FESTIVAL**, and  
2 which also included the **SAN DIEGO SPIRITS FESTIVAL**'s logo embedded  
3 within the video.

4 50. Radio Station FM 94.9's advertisement, with SDSF's copyrighted  
5 video embedded within, advertised on behalf of THE 22<sup>ND</sup> DISTRICT's festival  
6 (which was two months before the **SAN DIEGO SPIRITS FESTIVAL**) and  
7 ultimately became a great source of market confusion.

8 51. Indeed, SDSF only discovered the copyright infringement after  
9 receiving several calls from its confused participants.

10 52. SDSF immediately contacted Radio Station FM 94.9 and demanded  
11 that the infringing advertisement be removed immediately.

12 53. Radio Station FM 94.9 apologized, removed the advertisement, and  
13 admitted that the blatantly confusing advertisement had been running for "a few  
14 weeks" before SDSF called to demand that it be taken down.

15 54. Moreover, as THE 22<sup>ND</sup> DISTRICT's event drew closer, attendees and  
16 participants who had attended the **SAN DIEGO SPIRITS FESTIVAL** in prior  
17 years continuously contacted SDSF to inquire as to why SDSF had advanced the  
18 **SAN DIEGO SPIRITS FESTIVAL** and **SAN DIEGO INTERNATIONAL**  
19 **SPIRITS BOTTLE COMPETITION** from August 24-25, 2015 to June 27, 2015.

20 55. Indeed, SDSF received multiple calls to from participants about  
21 sending in their product, but SDSF had to inform the participants that they had not  
22 actually entered the **SAN DIEGO SPIRITS FESTIVAL** and **SAN DIEGO**  
23 **INTERNATIONAL SPIRITS BOTTLE COMPETITION**, but had entered the  
24 **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL FESTIVAL** and  
25 **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL COMPETITION**.

26 56. In response to this confusion, SDSF was forced to repeatedly explain to  
27 attendees and its own participants that THE 22<sup>ND</sup> DISTRICT's event was an entirely  
28 separate and distinct event from the **SAN DIEGO SPIRITS FESTIVAL** and **SAN**

1 **DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION**, despite the  
2 confusingly similar names of the two events.

3 57. In May of 2015, SDSF therefore reached out Todd Gloria's Office  
4 (now on the San Diego Board of Supervisors) for assistance. Mr. Gloria advocated  
5 on behalf of SDSF to THE 22<sup>ND</sup> DISTRICT, requesting that it cease the use of its  
6 infringing marks.

7 58. THE 22<sup>ND</sup> DISTRICT ignored Mr. Gloria's outreach.

8 59. THE 22<sup>ND</sup> DISTRICT ultimately held **DISTILLED: SAN DIEGO**  
9 **SPIRIT & COCKTAIL FESTIVAL** and **DISTILLED: SAN DIEGO SPIRIT &**  
10 **COCKTAIL COMPETITION** on June 27, 2015, as it had advertised.

11 60. Two months later, SDSF held the 7<sup>th</sup> Annual 2015 **SAN DIEGO**  
12 **SPIRITS FESTIVAL** and 3<sup>rd</sup> Annual **SAN DIEGO INTERNATIONAL**  
13 **SPIRITS BOTTLE COMPETITION** on August 24-25, 2015.

14 61. For the first time since its inception in 2009, the **SAN DIEGO**  
15 **SPIRITS FESTIVAL**'s number of attendees and participants decreased from the  
16 year prior.

17 62. In particular, SDSF enjoyed only 3500 attendees in 2015 (an 8%  
18 decrease from the prior year) and only 68 "Spirit Brands" (a 15% decrease from the  
19 prior year).

20 63. Thankfully, the 2015 **SAN DIEGO INTERNATIONAL SPIRITS**  
21 **BOTTLE COMPETITION** continued to increase in popularity despite the  
22 infringement of THE 22<sup>ND</sup> DISTRICT, having received 118 bottle entries from  
23 around the world (a 42% increase from the prior year).

24 64. After SDSF concluded its 2015 events, it was hopeful that the 22<sup>ND</sup>  
25 DISTRICT's infringing actions would cease and that it would not seek to once again  
26 host **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL FESTIVAL** and  
27 **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL COMPETITION** in 2016.

28 65. Nonetheless, THE 22<sup>ND</sup> DISTRICT has once again advertised its intent

1 to host its infringing events again in June 2016.

2 66. SDSF has therefore continued to take all actions within its power to  
3 protect its brand and goodwill that it has built in its marks, the **SAN DIEGO**  
4 **SPIRITS FESTIVAL** and **SAN DIEGO INTERNATIONAL SPIRITS**  
5 **BOTTLE COMPETITION**.

6 67. For instance, in September 2015, SDSF appealed to Senator Marty  
7 Block of California's 39th Senate District to advocate on its behalf unto THE 22<sup>ND</sup>  
8 DISTRICT. THE 22<sup>ND</sup> DISTRICT responded to Sen. Block's office that it had no  
9 intention of responding to SDSF's complaints or changing direction in 2016.

10 68. On October 8, 2015, SDSF sent a second cease and desist letter to THE  
11 22<sup>ND</sup> DISTRICT, through counsel this time, again requesting that it immediately  
12 cease and desist the use of the names **DISTILLED: SAN DIEGO SPIRIT &**  
13 **COCKTAIL FESTIVAL** and **DISTILLED: SAN DIEGO SPIRIT &**  
14 **COCKTAIL COMPETITION**. A true and correct copy of the October 8, 2015  
15 Letter is attached hereto as Exhibit 13.

16 69. THE 22<sup>ND</sup> DISTRICT ignored the October 8, 2015 Letter in its entirety.

17 70. On October 21, 2015, in recognition of SDSF's rights, the California  
18 Secretary of State approved its application to register the mark **SAN DIEGO**  
19 **SPIRITS FESTIVAL** as a Service Mark entitled to the protections afforded by  
20 service mark registration within the State of California. A true and correct copy of  
21 the October 21, 2015 Service Mark Registration is attached hereto as Exhibit 14.

22 71. On December 2, 2015, SDSF, by and through its counsel, filed a  
23 government claim with the California Victim Compensation and Government Claim  
24 Board (the "Claim Board") in respect to THE 22<sup>ND</sup> DISTRICT in compliance with  
25 Cal. Gov.C. §910 and Cal. Food & Agric.C. §3955 ("the Claim"). A true and correct  
26 copy of the December 2, 2015 Claim is attached hereto as Exhibit 15.

27 72. The Claim Board responded to the Claim on by letter dated December  
28 7, 2015, declining to take further action. As such, SDSF has exhausted its



1 administrative relief required before filing the instant action seeking damages. A  
2 true and correct copy of the December 7, 2015 Claim Denial is attached hereto as  
3 Exhibit 16.

4 **Irreparable Harm Re: the 2016 San Diego Spirits Festival**

5 73. Despite SDSF's attempts to informally resolve its dispute with the 22<sup>ND</sup>  
6 DISTRICT, THE 22<sup>ND</sup> DISTRICT has ignored all such attempts.

7 74. Instead, THE 22<sup>ND</sup> DISTRICT is once again actively promoting the  
8 second **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL FESTIVAL** and  
9 **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL COMPETITION**, which is  
10 set to take place on June 25, 2016, two months before SDSF's Eighth Annual **SAN**  
11 **DIEGO SPIRITS FESTIVAL** and **SAN DIEGO INTERNATIONAL SPIRITS**  
12 **BOTTLE COMPETITION** on August 27-28, 2016 and which will run  
13 concurrently to the many lead-up sub-events that SDSF will hold in San Diego  
14 County in June and July 2016.

15 75. Once again, SDSF has had countless customers and applicants from  
16 prior years who have contacted it with questions as a result of the confusion caused  
17 by THE 22<sup>ND</sup> DISTRICT's naming of its event.

18 76. THE 22<sup>ND</sup> DISTRICT is charged by the State of California to act for  
19 the good and benefit of the people and local businesses of San Diego County and  
20 receives public benefits for this purpose.

21 77. Notwithstanding its purpose, THE 22<sup>ND</sup> DISTRICT deceptively enticed  
22 SDSF and its principals into disclosing its proprietary information and business  
23 structure that it developed over several years in the **SAN DIEGO SPIRITS**  
24 **FESTIVAL** and **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE**  
25 **COMPETITION** on July 7, 2013, with promises and assurances of a "partnership"  
26 between it and SDSF and after further representing to SDSF that it had "no intention  
27 of going into commercial competition with the San Diego Spirits Festival."

28 78. SDSF did not demand that THE 22<sup>ND</sup> DISTRICT execute a

1 nondisclosure agreement prior to or at the July 7, 2013 meeting in that it naïvely  
2 believed that it was THE 22<sup>ND</sup> DISTRICT's actual intent to carry out its charge and  
3 not act in a deceptive manner.

4 79. Despite these assurances, THE 22<sup>ND</sup> DISTRICT and the individual  
5 members of its Board, including Lisa Barkett, Lee Haydu, Kathlyn Mead, Pierre  
6 Sleiman, Russ Penniman, Frederick Schenk, Stephen O. Shewmaker, Richard  
7 Valdez, David Watson, and Tim Fennell, did exactly what THE 22<sup>ND</sup> DISTRICT  
8 promised not to do, by taking SDSF's proprietary information and utilizing it to  
9 launch its own competing specialty cocktail festival.

10 80. Moreover, the deliberate manner in which THE 22<sup>ND</sup> DISTRICT has  
11 marketed its event has caused confusion and infringes upon SDSF's marks.

12 81. SDSF has suffered and will continue to suffer monetary and substantial  
13 damage to its goodwill, branding, and service as a result of THE 22<sup>ND</sup> DISTRICT's  
14 infringing actions, unless it receives the injunctive and monetary relief requested  
15 below.

#### 16 IV.

#### 17 **FIRST CAUSE OF ACTION FOR FEDERAL TRADEMARK**

#### 18 **INFRINGEMENT**

#### 19 **(SDSF v. THE 22<sup>ND</sup> DISTRICT)**

20 82. SDSF realleges paragraphs 1 through 81, inclusive, and incorporates  
21 the same herein as though set forth in full.

22 83. SDSF has used its mark **SAN DIEGO SPIRITS FESTIVAL** since  
23 2009 and this mark has acquired secondary meaning.

24 84. SDSF has also used its mark **SAN DIEGO INTERNATIONAL**  
25 **SPIRITS BOTTLE COMPETITION** since 2012 and this mark has acquired  
26 secondary meaning.

27 85. Therefore, these marks can be recognized for protection by the federal  
28 court, notwithstanding the absence of formal federal registration.

1           86.    THE 22<sup>ND</sup> DISTRICT has had both actual and constructive knowledge  
2 of SDSF's ownership of all rights in its marks prior to its infringing use of its marks,  
3 **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL FESTIVAL** and  
4 **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL COMPETITION** starting in  
5 2014.

6           87.    There exists an overlap in SDSF's and THE 22<sup>ND</sup> DISTRICT's trade  
7 areas, in that both SDSF and THE 22<sup>ND</sup> DISTRICT are conducting entertainment  
8 exhibitions featuring spirits and cocktails, with an attendant competition.

9           88.    SDSF's marks have been and are extensively advertised, publicized,  
10 and sold throughout the world, well before THE 22<sup>ND</sup> DISTRICT began utilizing the  
11 names, **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL FESTIVAL** and  
12 **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL COMPETITION**.

13           89.    By virtue thereof, together with consumer acceptance and recognition,  
14 and its related website, SDSF's mark identifies SDSF's exhibitions and  
15 competitions only, and distinguishes them from those of others.

16           90.    THE 22<sup>ND</sup> DISTRICT has used and continues to use marks confusingly  
17 similar to SDSF's marks in commerce, with full knowledge of SDSF's superior  
18 rights and with full knowledge that its infringing use of such marks is intended to  
19 cause confusion, mistake and/or deception in violation of 15 U.S.C. §1114.

20           91.    Moreover, THE 22<sup>ND</sup> DISTRICT's actions constitute a knowing,  
21 deliberate and willful infringement of SDSF's marks, which renders this as an  
22 exceptional case under 15 U.S.C. §1117(a).

23           92.    As a proximate result of THE 22<sup>ND</sup> DISTRICT's actions, SDSF has  
24 suffered substantial damages, as well as the continuing loss of goodwill and  
25 reputation SDSF has established over the last seven (7) years that it has been using  
26 its marks as described above. This continuing loss of goodwill cannot be properly  
27 calculated and thus constitutes irreparable harm and injury for which SDSF has no  
28 adequate remedy at law. SDSF will continue to suffer irreparable harm unless the

1 court enjoins THE 22<sup>ND</sup> DISTRICT's conduct.

2 V.

3 **SECOND CAUSE OF ACTION FOR FEDERAL DILUTION OF FAMOUS**

4 **MARK**

5 (SDSF v. THE 22<sup>ND</sup> DISTRICT)

6 93. SDSF realleges paragraphs 1 through 92, inclusive, and incorporates  
7 the same herein as though set forth in full.

8 94. SDSF's marks, **SAN DIEGO SPIRITS FESTIVAL** and **SAN**  
9 **DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** are famous  
10 and distinctive and is entitled to protection against dilution by blurring or  
11 tarnishment pursuant to 15 U.S.C. §1125(c).

12 95. By using names confusingly similar to SDSF's marks, THE 22<sup>ND</sup>  
13 DISTRICT is clearly trying to trade on SDSF's name and constitutes a scheme in  
14 which consumers are deceived as to the nature of services provided, the origin of  
15 those services, and the charges for those services.

16 96. THE 22<sup>ND</sup> DISTRICT has deliberately and willfully attempted to trade  
17 on SDSF's longstanding and hard-earned goodwill in its name, marks, and the  
18 reputation established by SDSF in connection with the events and services it  
19 provides, in particular, the **SAN DIEGO SPIRITS FESTIVAL** and the **SAN**  
20 **DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION**.

21 97. THE 22<sup>ND</sup> DISTRICT has deliberately and willfully attempted to trade  
22 on SDSF's reputation and goodwill as well as, in order to confuse consumers as to  
23 the origin and sponsorship of THE 22<sup>ND</sup> DISTRICT's services and to pass off its  
24 services and marks in commerce as those of SDSF.

25 98. THE 22<sup>ND</sup> DISTRICT has and will continue to injure SDSF's business  
26 reputation, has tarnished the distinctive quality of SDSF's famous names and marks,  
27 and have lessened the capacity of SDSF's famous **SAN DIEGO SPIRITS**  
28 **FESTIVAL** and **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE**

**COMPETITION** service marks to identify and distinguish SDSF's services in violation of 15 U.S.C. §1125(c).

99. Moreover, THE 22<sup>ND</sup> DISTRICT's actions constitute a knowing, deliberate and willful dilution of SDSF's marks, which renders this as an exceptional case under 15 U.S.C. §1117(a).

100. As a proximate result of THE 22<sup>ND</sup> DISTRICT's actions, SDSF has suffered substantial damages, as well as the continuing loss of goodwill and reputation SDSF has established over the last seven (7) years that it has been using its marks as described above. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and injury for which SDSF has no adequate remedy at law. SDSF will continue to suffer irreparable harm unless the court enjoins THE 22<sup>ND</sup> DISTRICT's conduct.

## VI.

### **THIRD CAUSE OF ACTION FOR FEDERAL UNFAIR COMPETITION** **(SDSF v. THE 22ND DISTRICT)**

101. SDSF realleges paragraphs 1 through 99, inclusive, and incorporates the same herein as though set forth in full.

102. SDSF has used its mark SAN DIEGO SPIRITS FESTIVAL since 2009 and this mark has acquired secondary meaning.

103. SDSF has also used its mark SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION since 2012 and this mark has acquired secondary meaning.

104. Therefore, pursuant to 15 U.S.C. §1125(a), these marks can be recognized for protection by the federal court, notwithstanding the absence of formal federal registration.

105. THE 22<sup>ND</sup> DISTRICT has had both actual and constructive knowledge of SDSF's ownership of all rights in its marks prior to its infringing use of its marks, **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL FESTIVAL** and

1 **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL COMPETITION** starting in  
2 2014.

3 106. There exists an overlap in SDSF's and THE 22<sup>ND</sup> DISTRICT's trade  
4 areas, in that both SDSF and THE 22<sup>ND</sup> DISTRICT are conducting entertainment  
5 exhibitions featuring spirits and cocktails, with an attendant competition.

6 107. SDSF's marks have been and are extensively advertised, publicized,  
7 and sold throughout the world, well before THE 22<sup>ND</sup> DISTRICT began utilizing the  
8 names, **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL FESTIVAL** and  
9 **DISTILLED: SAN DIEGO SPIRIT & COCKTAIL COMPETITION**.

10 108. By virtue thereof, together with consumer acceptance and recognition,  
11 and its related website, SDSF's mark identifies SDSF's exhibitions and  
12 competitions only, and distinguishes them from those of others.

13 109. THE 22<sup>ND</sup> DISTRICT has used and continues to use marks confusingly  
14 similar to SDSF's marks in commerce, with full knowledge of SDSF's superior  
15 rights and with full knowledge that its infringing use of such marks is intended to  
16 cause confusion, mistake and/or deception in violation of 15 U.S.C. §1125(a).

17 110. Moreover, THE 22<sup>ND</sup> DISTRICT's actions constitute a knowing,  
18 deliberate and willful infringement of SDSF's marks, which renders this as an  
19 exceptional case under 15 U.S.C. §1117(a).

20 111. As a proximate result of THE 22<sup>ND</sup> DISTRICT's actions, SDSF has  
21 suffered substantial damages, as well as the continuing loss of goodwill and  
22 reputation SDSF has established over the last seven (7) years that it has been using  
23 its marks as described above. This continuing loss of goodwill cannot be properly  
24 calculated and thus constitutes irreparable harm and injury for which SDSF has no  
25 adequate remedy at law. SDSF will continue to suffer irreparable harm unless the  
26 court enjoins THE 22<sup>ND</sup> DISTRICT's conduct.

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VII.

**FOURTH CAUSE OF ACTION FOR STATE SERVICE MARK  
INFRINGEMENT**

**(SDSF v. THE 22<sup>ND</sup> DISTRICT)**

112. SDSF realleges paragraphs 1 through 111, inclusive, and incorporates the same herein as though set forth in full.

113. THE 22<sup>ND</sup> DISTRICT has intentionally used SDSF's service marks to trade on SDSF's long-standing and hard-earned goodwill in its name and marks in the **SAN DIEGO SPIRITS FESTIVAL** and the **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** as well as in order to confuse consumers as to the origin and sponsorship of THE 22<sup>ND</sup> DISTRICT's goods and services and to pass their products and services off as if they were endorsed by or originated with SDSF.

114. THE 22<sup>ND</sup> DISTRICT's conduct is likely to cause confusion, mistake or deception as to the affiliation, connection or association of THE 22<sup>ND</sup> DISTRICT and its services with the services of SDSF, and as to the origin, sponsorship or approval of THE 22<sup>ND</sup> DISTRICT and its products and services.

115. THE 22<sup>ND</sup> DISTRICT had direct and full knowledge of SDSF's prior use of and rights in the marks **SAN DIEGO SPIRITS FESTIVAL** and the **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** before the acts complained of herein.

116. THE 22<sup>ND</sup> DISTRICT's unlawful and unfair conduct has led to a material diminution of the reputation and goodwill established by SDSF in its marks, which constitutes service mark infringement in violation of Cal. Bus. & Prof. Code §14245.

117. As a proximate result of THE 22<sup>ND</sup> DISTRICT's actions, SDSF has suffered substantial damages, as well as the continuing loss of goodwill and reputation SDSF has established over the last seven (7) years that it has been using

its marks as described above. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and injury for which SDSF has no adequate remedy at law. SDSF will continue to suffer irreparable harm unless the court enjoins THE 22<sup>ND</sup> DISTRICT's conduct.

# VIII.

## **FIFTH CAUSE OF ACTION FOR STATE SERVICE MARK DILUTION**

### **(SDSF v. THE 22<sup>ND</sup> DISTRICT)**

118. SDSF realleges paragraphs 1 through 117, inclusive, and incorporates the same herein as though set forth in full.

119. THE 22<sup>ND</sup> DISTRICT has intentionally used SDSF's service marks to trade on SDSF's long-standing and hard-earned goodwill in its name and marks in the **SAN DIEGO SPIRITS FESTIVAL** and the **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** as well as in order to confuse consumers as to the origin and sponsorship of THE 22<sup>ND</sup> DISTRICT's goods and services and to pass their products and services off as if they were endorsed by or originated with SDSF.

120. THE 22<sup>ND</sup> DISTRICT's conduct is likely to cause confusion, mistake or deception as to the affiliation, connection or association of THE 22<sup>ND</sup> DISTRICT and its services with the services of SDSF, and as to the origin, sponsorship or approval of THE 22<sup>ND</sup> DISTRICT and its products and services.

121. THE 22<sup>ND</sup> DISTRICT had direct and full knowledge of SDSF's prior use of and rights in the marks **SAN DIEGO SPIRITS FESTIVAL** and the **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION** before the acts complained of herein.

122. THE 22<sup>ND</sup> DISTRICT's unlawful and unfair conduct has led to a material dilution of the reputation and goodwill established by SDSF in its marks, which constitutes service mark dilution in violation of Cal. Bus. & Prof. Code §14247.



123. As a proximate result of THE 22<sup>ND</sup> DISTRICT's actions, SDSF has suffered substantial damages, as well as the continuing loss of goodwill and reputation SDSF has established over the last seven (7) years that it has been using its marks as described above. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and injury for which SDSF has no adequate remedy at law. SDSF will continue to suffer irreparable harm unless the court enjoins THE 22<sup>ND</sup> DISTRICT's conduct.

**IX.**

**SIXTH CAUSE OF ACTION FOR STATE UNFAIR COMPETITION**

**(SDSF v. THE 22<sup>ND</sup> DISTRICT)**

124. SDSF realleges paragraphs 1 through 123, inclusive, and incorporates the same herein as though set forth in full.

125. THE 22<sup>ND</sup> DISTRICT's actions constitute unlawful, unfair, or fraudulent business practices and deceptive, untrue, or misleading advertising in violation of California statutory law, including violation of Cal. Bus. & Prof. Code §17200 and §17500.

126. THE 22<sup>ND</sup> DISTRICT's unlawful, unfair, or fraudulent business practices and deceptive, untrue or misleading advertising have harmed SDSF.

127. As a proximate result of THE 22<sup>ND</sup> DISTRICT's actions, SDSF has suffered substantial damages, as well as the continuing loss of goodwill and reputation SDSF has established over the last seven (7) years that it has been using its marks as described above. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and injury for which SDSF has no adequate remedy at law. SDSF will continue to suffer irreparable harm unless the court enjoins THE 22<sup>ND</sup> DISTRICT's conduct.

128. SDSF is further entitled to recover from THE 22<sup>ND</sup> DISTRICT the damages, including attorneys' fees, it has sustained and will sustain, and any gains, profits, and advantages obtained by it as a result of its acts of unfair competition

1 alleged above.

2 **X.**

3 **SEVENTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY**

4 **(SDSF v. THE 22<sup>ND</sup> DISTRICT)**

5 129. SDSF realleges paragraphs 1 through 128, inclusive, and incorporates  
6 the same herein as though set forth in full.

7 130. In mid-2013, THE 22<sup>ND</sup> DISTRICT contacted SDSF and invited Mr.  
8 and Mrs. Edwards to meet at its headquarters in Del Mar on July 7, 2013, in order to  
9 discuss a potential “partnership” between SDSF and THE 22<sup>ND</sup> DISTRICT.

10 131. At the meeting, THE 22<sup>ND</sup> DISTRICT first assured SDSF that THE  
11 22<sup>ND</sup> DISTRICT had “no intention of going into commercial competition with the  
12 San Diego Spirits Festival.” Instead, THE 22<sup>ND</sup> DISTRICT assured Mr. and Mrs.  
13 Edwards that it was interested in nothing more than exploring a “partnership” with  
14 SDSF that could include a lead up event for SDSF’s **SAN DIEGO SPIRITS**  
15 **FESTIVAL** and **SAN DIEGO INTERNATIONAL SPIRITS BOTTLE**  
16 **COMPETITION**.

17 132. As an agricultural association created by the people of the state of  
18 California, THE 22<sup>ND</sup> DISTRICT owes a fiduciary duty to SDSF as a citizen and  
19 resident within its District, as solidified by THE 22<sup>ND</sup> DISTRICT’s own Mission  
20 Statement, which is “To manage and promote a world-class, multi-use, public  
21 assembly facility with an emphasis on agriculture, education, entertainment and  
22 recreation in a fiscally sound and environmentally conscientious manner for the  
23 benefit of all.”

24 133. Likewise, the factual circumstances of this case give rise to a  
25 determination that a fiduciary duty existed between SDSF and THE 22<sup>ND</sup>  
26 DISTRICT, considering that SDSF placed the upmost trust and confidence in THE  
27 22<sup>ND</sup> DISTRICT when it agreed to participate in the “partnership” meeting that THE  
28 22<sup>ND</sup> DISTRICT suggested.

1 134. In essence, SDSF placed a special confidence in THE 22<sup>ND</sup> DISTRICT  
2 who, in equity and good conscience, is bound to act in good faith and with due  
3 regard to the interests of SDSF.

4 135. THE 22<sup>ND</sup> DISTRICT and the individual members of its Board of  
5 Directors, including Lisa Barkett, Lee Haydu, Kathlyn Mead, Pierre Sleiman, Russ  
6 Penniman, Frederick Schenk, Stephen O. Shewmaker, Richard Valdez, David  
7 Watson, and Tim Fennell, failed to act in accordance with the fiduciary duties they  
8 owe to SDSF by, among other things, deceptively enticing SDSF and its principals  
9 into disclosing its proprietary information and business structure that it developed  
10 over several years in respect to the **SAN DIEGO SPIRITS FESTIVAL** and **SAN**  
11 **DIEGO INTERNATIONAL SPIRITS BOTTLE COMPETITION**, with  
12 promises and assurances of a “partnership” between it and SDSF and after further  
13 representing to SDSF that it had “no intention of going into commercial competition  
14 with the San Diego Spirits Festival.”

15 136. Despite these assurances, THE 22<sup>ND</sup> DISTRICT did exactly what it  
16 promised not to do, by taking SDSF’s proprietary information and utilizing it to  
17 launch its own competing specialty cocktail festival, whose name confusingly  
18 infringes upon the marks that SDSF has established with respect to its marks, **SAN**  
19 **DIEGO SPIRITS FESTIVAL** and **SAN DIEGO INTERNATIONAL SPIRITS**  
20 **BOTTLE COMPETITION**.

21 137. THE 22<sup>ND</sup> DISTRICT’s primary purpose was to create its own  
22 competing specialty cocktail festival.

23 138. Indeed, the deliberate manner in which THE 22<sup>ND</sup> DISTRICT has  
24 marketed its event has unfairly caused confusion and infringes upon SDSF’s marks.

25 139. In acting as described above, THE 22<sup>ND</sup> DISTRICT did not exercise the  
26 care required of an entity with the trust and responsibility entrusted and invested in  
27 it by failing to act in good faith, with reasonable care, and undivided loyalty.

28 140. SDSF has suffered and will continue to suffer monetary and substantial

1 damage to its goodwill, branding, and service as a proximate result of THE 22<sup>ND</sup>  
2 DISTRICT's infringing actions, unless it receives the injunctive and monetary relief  
3 herein.

4 141. In addition to injunctive or monetary damages, SDSF is entitled to  
5 punitive damages pursuant to Cal. Civ.C. §3294 because THE 22<sup>ND</sup> DISTRICT's  
6 acts constituted malice, oppression, and fraud.

7 **XI.**

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, SDSF requests Judgment against THE 22<sup>ND</sup> DISTRICT, as  
10 follows:

11 1. That a Judgment be entered against THE 22<sup>ND</sup> DISTRICT such that it  
12 is permanently enjoined from using or employing, directly or indirectly, SDSF's  
13 mark or any mark, logo, device or the like that is confusingly similar to the SDSF's  
14 mark, or is likely to confuse or deceive as to the affiliation, connection, sponsorship,  
15 or association of the SDSF's mark or products or commercial activities of THE 22<sup>ND</sup>  
16 DISTRICT with SDSF or its mark, or SDSF's commercial activities.

17 2. That THE 22<sup>ND</sup> DISTRICT be directed to file with this Court, within  
18 thirty days after entry of any injunction in this case, a written statement, under oath,  
19 setting forth in detail the manner in which THE 22<sup>ND</sup> DISTRICT has complied with  
20 the injunction;

21 3. That an accounting be directed to determine the profits of THE 22<sup>ND</sup>  
22 DISTRICT resulting from its trademark infringement and unfair competition which  
23 are the subject of this suit, and that such damages be multiplied as allowable under  
24 all applicable statutes;

25 4. That SDSF recover its damages, in an as yet undetermined amount,  
26 resulting from the trademark infringement and unfair competition of THE 22<sup>ND</sup>  
27 DISTRICT;

28 5. That SDSF recover its costs of this action;

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6. That SDSF be awarded its reasonable attorneys' fees;

7. That SDSF be awarded punitive damages in an amount to be determined; and

8. That SDSF recover all such other and further relief as the Court may deem appropriate.

**XII.**

**DEMAND FOR JURY TRIAL**

SDSF requests a trial by jury on all issues so triable as of right.

DATED: December 30, 2015      **PURDY & BAILEY**

By: /s/ Micah L. Bailey  
Charles E. Purdy IV  
Micah L. Bailey  
Attorneys for AEGIS SOFTWARE, INC.  
dba SAN DIEGO SPIRITS FESTIVAL  
and SAN DIEGO INTERNATIONAL  
SPIRITS BOTTLE COMPETITION,  
Plaintiff